

BOARD OF PAROLE HEARINGS
Executive Board Meeting
September 19 & 20, 2016

September 19, 2016

Meeting Called to Order at 1:04 p.m.

Roll Call: Commissioners Garner, Chappell, Fritz, Grounds, Minor, Montes, Peck, Roberts, Turner and Zarrinnam present. Commissioners Anderson and Labahn absent.

Commissioner GARNER stated that a majority of currently-appointed commissioners is present.

CONSENT CALENDAR

Public Comment on Consent Calendar

KEITH WATTLEY, Uncommon Law, stated that the draft minutes of the August 2016 minutes do not reflect the commissioners' questions, comments and concerns expressed regarding the draft Forensic Assessment Division regulation. He requested that the minutes be amended to reflect the commissioners' discussion of the regulation.

Commissioner MINOR moved to approve the consent calendar. Commissioner TURNER seconded the motion, which carried unanimously.

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER congratulated Commissioners Anderson, Fritz, Labahn, Minor and Zarrinnam on their reappointment to the board. She introduced and welcomed newly appointed Commissioner GROUNDS to the board.

SHAFFER stated that the September 2016 Three-Judge Panel status report has been filed. From January 1, 2014 to August 31, 2016, there have been 1,766 youth offender hearings, resulting in 480 grants, 1,073 denials and 213 stipulations to unsuitability. There are no split votes. There were 984 hearings waived, postponed, cancelled or continued.

From January 1, 2015 to August 31, 2016, 8,515 non-violent, second-strike inmates have been referred to the board, which approved 2,914 inmates for release and denied release to 2,790 inmates. Other reviews are pending, since the 30-day comment period has not elapsed or the inmate is not within 60 days of his or her 50 percent time-served date. Another 27 hearings were postponed, continued or cancelled.

There were 1,525 elderly parole hearings between February 11, 2014 and August 31, 2016, of which 389 resulted in grants, 1,012 in denials and 115 in stipulations to unsuitability. There are no split votes. A further 696 hearings were waived, postponed, continued or cancelled.

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As of September 9, 2016, the board has held 88 medical parole hearings and another 27 hearings were scheduled but postponed, continued, or cancelled.

SHAFFER stated that the Governor signed Assembly Bill 898, which takes effect January 1, 2017. The bill requires the board to send a hearing notice to the employing fire department whenever a case involves the murder of a fire fighter.

On August 26, 2016, SHAFFER visited the Central California Women's Facility and spoke to about 100 to 150 long-term inmates. The visit was well-received, but it is apparent that there remains considerable misinformation among the inmate population about the board's hearing processes.

In August 2016, the California Department of Corrections and Rehabilitation published its 2015 report on recidivism. Of 95,690 inmates released in fiscal year 2010-11, 44.6% returned to prison within 3 years. This marks the fifth consecutive year that the recidivism rate for CDCR inmates declined. The report also tracked the recidivism of lifer parolees granted parole by the board, 392 of whom were released in fiscal year 2010-11. Less than one percent (3 inmates) returned to prison with a new term and 16 returned with a parole violation. The report is on the CDCR website and was distributed to the commissioners and deputy commissioners.

Report from Chief Counsel, Jennifer Neill

NEILL stated that the board has filed a petition for review of the *Butler* decision in the California Supreme Court. It is anticipated that the court will decide by the end of this year whether to accept the petition. NEILL also reported that the draft youth offender regulations are available today. The board will not be voting on them at this meeting. The board is seeking public comment and input on the draft regulations.

NEILL stated that Senior Staff Attorney, KATIE RILEY has accepted a promotion at CDCR. She thanked RILEY for her service to the board.

SHAFFER stated that the board will continue to calculate terms for lifer inmates, but not for determinately-sentenced inmates. She also thanked RILEY for her service.

Report from Chief Deputy of Program Operations, Sandra Maciel

The Northern California inmate panel orientation took place in Sacramento on September 12, 2016. Twenty-seven state-appointed attorneys attended along with six other participants. MACIEL stated that the Southern California orientation will be in Diamond Bar on September 26, 2016.

Report from Chief Deputy of Field Operations, Rhonda Skipper-Dotta

SKIPPER-DOTTA stated that on September 13, 2016, the board hosted an orientation in Sacramento for independent evaluators for mentally-disordered offenders. The board will host additional orientations on September 20, 2016 at Atascadero State Hospital and on September 27, 2016 in Diamond Bar.

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SKIPPER-DOTTA also reported that the hearing room at the California Institution for Men is being moved from the administrative building to new premises with greatly improved facilities. The new hearing room is expected to be available for the November 2016 hearing calendar.

SKIPPER-DOTTA announced the retirement of Deputy Commissioners STUART GARDNER and RITA WAGNER and thanked them for their service.

Report from Chief Psychologist, Forensic Assessment Division, Dr. Cliff Kusaj

KUSAJ stated that, in September, the forensic assessment division's psychologists were assigned 290 comprehensive risk assessments to be completed in October. Most of the assessments are for hearings scheduled after December 15, 2016. It is anticipated that all assessments will be completed and distributed at least 30 days before the hearing, with more than 85% being completed at least 60 days before the hearing. Approximately 35% will be completed at least 90 days before the hearing. There are no unassigned assessments on the December calendar and only 54 assessments for the January, 2017 calendar are currently unassigned. In October 2016, there will be 185 fewer assessments to be assigned as compared with October 2015.

DISCUSSION ITEMS

Regulation Regarding the Forensic Assessment Division, presented by Chief Counsel, Jennifer Neill

NEILL summarized the draft of the revised California Code of Regulations, title 15, section 2240. She highlighted amendments resulting from comments at the August 2016 executive meeting and received thereafter. Section 2240, subdivision (a) requires the board's psychologists to incorporate standardized approaches generally accepted in the psychological community to identify, measure, and categorize the inmate's risk of violence. Under subdivision (b) of the section, psychologists must take into consideration the youth factors described in Penal Code section 3051, subdivision (f)(1).

Every risk assessment must be reviewed by the chief psychologist or senior psychologist before being finalized. The assessment becomes final on the date it is first approved by the chief or senior psychologist. A new risk assessment must be prepared for a hearing if more than three years have passed since the last assessment became final. Subdivision (d)(2) enables the board to prepare a risk assessment for inmates housed outside California. This provision resulted from comments made at the August 2016 meeting.

Subdivision (g) requires the chief psychologist to prepare an addendum to a risk assessment containing an identified factual error. The addendum must address whether the error materially impacted the assessment's conclusions about the inmate's risk of violence. The addendum must be sent before the hearing to the inmate and his or her attorney of record, together with the chief counsel's miscellaneous decision.

Subdivision (j) was added to permit the inmate at the hearing to supplement the record with objections to the assessment's conclusions or clarifications of statements which it attributes to the inmate.

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NEILL recommended that the board approve the regulation as currently drafted.

Public Comment on the Draft Regulation

KEITH WATTLEY, Uncommon Law, stated that the regulation does not address his concerns, as expressed at the August 2016 meeting or in subsequent correspondence. He predicted that the Office of Administrative Law will not approve the regulation. WATTLEY stated that issues of quality control, training, and assessment review have undermined inmates' confidence in the process. Many believe that the board's clinicians are hostile to inmates. He maintained that clinicians' interviews with inmates should be recorded and stated that it would not inhibit open discussion. He stated the proposed review procedures are unfair. False reporting of an inmate's statement should be considered a factual error. He recommended a compromise in which the hearing panel could postpone a hearing and request that a recorded interview be transcribed if deemed necessary. That way it would not be necessary to transcribe all recorded interviews but only those requested to be transcribed by the board or the board's chief counsel.

ROBIN GILMORE, Life Support Alliance, read a letter from VANESSA NELSON-SLOANE, objecting to the regulation. The regulation has not been amended materially, despite the submission of written comments. NELSON-SLOANE supported recording the clinicians' interviews and stated that the proposed appeal procedures are inadequate. She recommended that the board reject the draft regulation.

KONY KIM, Uncommon Law, stated that there is insufficient quality control of risk assessments. There are frequent factual errors and failure to document inmates' programming. It is essential that inmates receive the assessments in good time, so that they might challenge any inaccuracies. The failure to correct errors in inmate statements is highly prejudicial, particularly in relation to the Governor's review of parole grants.

JILL KLINGE, Alameda County District Attorney's Office, welcomed extending risk assessments to out-of-state inmates. She expressed concern that subdivision (b)(2) only provides that the board "may" rather than "shall" prepare an assessment for such inmates.

DR. ELLEN YATES, former forensic psychologist, supported recording clinicians' interviews and denied that there would be any inhibiting effect. She expressed the view that CDCR's treating clinicians are frequently negative and hostile towards inmates and that the quality control of risk assessments is inadequate.

Commissioner ROBERTS moved to approve the draft regulation and the motion was seconded by Commissioner ZARRINAM. The motion carried unanimously.

PUBLIC COMMENT

KEITH WATTLEY, Uncommon Law, expressed concern about scheduling youth offender hearings. Inmates who were eligible for a hearing at the time the legislation came into effect must have their hearing scheduled by December 31, 2017. WATTLEY stated that youth offenders who became eligible for youth offender hearing after Senate Bill 261 became effective

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must have their hearing scheduled immediately. As such, the board should expedite hearings for those inmates or risk litigation.

Meeting recessed at 2:06 p.m.

September 20, 2016

Meeting called to order at 10:04 a.m.

Roll Call: Commissioners Garner, Chappell, Fritz, Grounds, Labahn, Minor, Montes, Peck, Roberts, Turner, and Zarrinnam present. Commissioner Anderson absent.

Commissioner GARNER stated that a majority of currently-appointed commissioners is present.

EN BANC REFERRALS

Referral pursuant to Penal Code section 1170(e) to determine eligibility for recommendation to sentencing court for recall of sentence.

A. DIAS, WILFRED P-70537

AARON WEST, Santa Clara County District Attorney's Office, opposed a recommendation for recall of sentence.

B. MARTINEZ, ARMANDO F-91845

No speakers.

C. ZELINSKI, DAVID J-58252

No speakers.

Referral by the Chief Counsel pursuant to Penal Code section 3041(b) and California Code of Regulations, title 15, section 2042, to assure complete, accurate, consistent and uniform decisions and the furtherance of public safety.

D. RAMIREZ, ESTEBAN K-96812

No speakers.

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Referral by the Governor pursuant to Penal Code section 3041.1 and California Code of Regulations, title 15, section 2044(b) to request review of a parole decision by the full board.

E. BROOKS, RAYLEEN W-40103

BRIAN PRATT, Los Angeles Police Department captain and victim's brother, opposed the inmate's release on parole.

CHRISTINE WARD, I-Can and Crime Victims Action Alliance, read a letter from CHARLES BECK, Chief of Police, Los Angeles Police Department, opposing the inmate's release on parole.

JERRY ELSTE, Ripple Effects, supported the inmate's grant of parole.

CELIA POLITEO read a letter from DONNA LEBOWITZ, Los Angeles County District Attorney's Office, recommending ordering a rescission hearing.

F. PRITCHARD, ERIC K-78061

CELIA POLITEO read a letter from DONNA LEBOWITZ, Los Angeles County District Attorney's Office, recommending ordering a rescission hearing.

OPEN COMMENTS

VANESSA NELSON SLOANE, Life Support Alliance, stated that the Amends Project has been introduced in another three institutions and it is intended to expand the project into more institutions. She expressed concern that panels do not give great weight to youth offender factors and the hallmark features of youth. The issues are often only considered superficially at hearings and panels' decisions generally do not address them sufficiently.

Meeting adjourned at 10:36 a.m.

Board of Parole Hearings
Scheduled and Backlog Hearings Report
Penal Code section 3041(d)
October, 2016

